IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 13404 of 2000
with
SPECIAL CIVIL APPLICATION No 13406 of 2000
with
Special Civil Application No.5624 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,TrEibunal/Tribunals? : NO

UNION OF INDIA

Versus

D K CHAUHAN

Appearance:

1. Special Civil Application No. 13404 of 2000
MR MUKESH A PATEL for Petitioner No. 1
(MR JAYANT PATEL) for Petitioner No. 1
MR GR MALHOTRA for Respondent No. 1

2. Special Civil Application No. 13406 of 2000
(MR JAYANT PATEL) for Petitioner No. 1
MR GR MALHOTRA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/08/2002

ORAL JUDGEMENT

1. The Railway Administration has challenged the order passed by the learned Chief Justice under Section 11 of the Arbitration and Conciliation Act, 1996 in Arbitration Petition No.36 of 1999. The learned Chief Justice, by order dated 7.4.2000, appointed one Mr.P.F. Raval as the Arbitrator nominated by the Contractor and Mr.G.S. Koppikar, retired Chief Principal Engineer of the Railway as Arbitrator suggested by the Railway. In the order dated 7.4.2000, it has been clearly mentioned by the learned Chief Justice that with the consent of the parties, the abovenamed two persons were appointed as Arbitrators. The Railway Administration thereafter filed an application for recalling the said order relying on Clause 64(3) of the Contract, which reads as under :-

> " ... ...
>
> no person other than a gazetted railway officer appointed by the General Manager or aforesaid should act as an arbitrator / umpire and if for any reason that is not possible, the matter is not to be referred to arbitration at all.
>
> ... ..."

Relying upon the said Clause, application was filed for recalling the earlier order. However, the learned Chief Justice rejected that application as it was found that there was no reason to recall the earlier order appointing Arbitrators. The petitioner has filed these petitions on the ground that the order of the learned Chief Justice appointing the Arbitrators is required to be quashed and set aside as the dispute in question is not required to be referred to arbitration at all in view of the No Objection Certificate given by the Contractor at the time of settling their claim as well as in view of the fact that the person who was appointed as Arbitrator is not qualified to be appointed as an Arbitrator in view of the contract between the parties.

2. In Special Civil Application Nos. 13404 of 2000 and 13406 of 2000, similar point is involved as to whether the order passed by the learned Chief Justice under Section 11 of the Act can be the subject matter of challenge in a petition filed under Article 226 of the Constitution of India. In my view, in view of the decision of the Apex Court in Konkan Railway Corporation Ltd. and another v. Rani Construction Pvt. Ltd., 2002(1) Arb.LR 326 (SC) (FB), these petitions are not

maintainable. Since it is open for the Railway Administration to take all contentions before the Arbitrator, including even the question of his jurisdiction as well as question about the qualification of the Arbitrator to act as Arbitrator as well as subsequently to take all the available contentions before the appropriate Court at the relevant time as provided by Section 34 of the Act, these petitions cannot be entertained and in view of the decision of the Apex Court (supra), all these points can be canvassed before the Arbitrator as the order of the Chief Justice, appointing the Arbitrators, is merely an administrative order and it cannot be said that there is any adjudication on the part of the learned Chief Justice by passing the order under Section 11 of the Act. In view of the aforesaid position of law, these Special Civil Applications cannot be entertained. However, it is clarified that it will be open for the Railway Administration to take all these points, including the question about the maintainability of arbitration proceedings as well as even the jurisdiction of the Arbitrators to decide the said dispute, including even the question of composition of the Arbitral Tribunal. Accordingly, the Railway Administration can take all these points at an appropriate stage before the Arbitrator as well as if need arises, even before the Competent Court. It is clarified that, on merits, the said issues are not adjudicated at all by this Court. These petitions are rejected on the ground that it will be open for the petitioners to take all these points before the appropriate authority, as indicated above and the order passed by the learned Chief Justice under Section 11 of the Act, by which Arbitrators are appointed by the Chief Justice, cannot be a subject matter of a writ petition, under Article 226 of the Constitution of India. Under these circumstances, in my view, these petitions cannot be entertained as the same are not maintainable.

It is clarified that so far as Special Civil Application No.5624 of 2001 is concerned, no final order under Section 11 of the Act is passed and the petitioner is asked only to submit the name of the Arbitrator. It is for the Railway Administration to give appropriate name as they think proper.

3. All these petitions are accordingly dismissed. Rule is discharged. Ad interim is vacated with no order as to costs.

29th August, 2002 (P.B. Majmudar, J.)

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(apj)